

SHELLEY RUBIN and MAUREEN I. FELLER,
Plaintiffs,
vs.
CITY OF LANCASTER,
Defendant.

CASE NO. CV 10-4046 DSF (JCx)
AMENDED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AFTER COURT TRIAL

¹ The Court Trial Order required the parties to file a copy of the opposing party's proposed findings of fact and conclusions of law, marked as follows: "(a) Strike through those portions the party disputes; (b) Bold those portions the party admits; and (c) Underline those portions the party admits but considers irrelevant." Defendant complied with this Order; Plaintiffs did not. The Court has included certain admitted facts even if no specific evidence was provided. At trial Plaintiffs limited their claim to the April 27, 2010 invocation, (Tr. 4), and specified that they challenge only the reference to "Jesus" in that invocation, (Tr. 83-84). By including certain facts in these findings, the Court does not suggest that the facts are relevant to the claim before the Court.

FINDINGS OF FACT

1
2
3 1. The parties have stipulated that Plaintiffs Shelley Rubin and Maureen I.
4 Feller have standing to pursue this action. Rubin is Jewish; Feller is Christian.
5

6 2. Defendant City of Lancaster is a municipal corporation duly organized,
7 existing, and operating under the laws of the State of California.
8

9 3. Lancaster's City Council holds regular meetings on the second and fourth
10 Tuesday of each month. For many years prior to August 10, 2009, the City
11 Council opened its meetings with invocations that contained explicitly sectarian
12 religious references, including specific references to Jesus Christ. A substantial
13 majority of the prayers were Christian in nature.
14

15 4. On August 10, 2009, the American Civil Liberties Union sent to the
16 mayor and City Council members a letter that referred to complaints it received
17 with respect to the practice of opening meetings with invocations referring to Jesus
18 Christ or containing other explicitly sectarian religious references. (Pls.' Tr. Brief,
19 Ex. A.)
20

21 5. At its regular meeting on August 25, 2009, the City Council approved
22 and adopted its "Policy Regarding Invocations at Meetings of the City Council of
23 the City of Lancaster" ("Invocation Policy"). The Invocation Policy was admitted
24 as Exhibit 3.
25

26 6. Lancaster's City Manager promulgated Administrative Policies and
27 Procedures ("Procedures") to implement the Invocation Policy. The Procedures
28 were admitted as Exhibit 4.

1
2 7. Pursuant to the Invocation Policy and the Procedures, Lancaster's City
3 Clerk compiles and maintains a database of the religious congregations with an
4 established presence in the City.

5
6 8. The City Clerk compiles this list by referencing Lancaster's Yellow
7 Pages listings for "churches," "congregations," and other religious assemblies;
8 conducting research on the internet using search terms such as "synagogue,"
9 "church," "temple," "chapel," and "mosque"; consulting the local chamber of
10 commerce; and consulting the *Antelope Valley Press*. The list is updated annually.

11
12 9. All religious congregations with an established presence in the City are
13 eligible to be included on the list.

14
15 10. The City Clerk has never removed anyone from the list, or refused to
16 include anyone on the list.

17
18 11. The City Clerk does not inquire into the faith, denomination, or other
19 religious belief of a congregation included on the list, or that asks to be included on
20 the list.

21
22 12. The City Clerk mails to the congregations on the list a letter inviting
23 them to give an invocation before a City Council meeting. Pursuant to the
24 Invocation Policy, the letter states: "This opportunity is voluntary, and you are free
25 to offer the invocation according to the dictates of your own conscience. To
26 maintain a spirit of respect and ecumenism, the City Council requests that the
27 prayer opportunity not be exploited as an effort to convert others to the particular
28 faith of the invitational speaker nor to disparage any faith or belief different than

1 that of the invitational speaker.”

2
3 13. A congregation may deliver an invocation only three times a year, and
4 may not do so at two consecutive City Council meetings.

5
6 14. Every person who has volunteered to deliver an invocation before a City
7 Council meeting has been scheduled to do so.

8
9 15. No compensation is offered in exchange for giving an invocation.

10
11 16. Neither the City Manager nor any member of the City Council has
12 instructed the City Clerk concerning the scheduling of speakers or attempted to
13 influence how she schedules speakers.

14
15 17. On November 10, 2009, the City Council decided to submit to City
16 voters a non-binding measure (“Measure I”) which asked: “In response to a recent
17 complaint, with respect to the invocations that contained a reference to Jesus Christ
18 shall the City Council continue its invocation policy in randomly selecting local
19 clergy of different faiths to deliver the invocation without restricting the content
20 based on their beliefs, including references to Jesus Christ?”

21
22 18. Lancaster’s City Attorney was obligated to submit an impartial analysis
23 of the measure to allow the electorate to make an informed decision. The City
24 Attorney’s legal analysis stated that the Invocation Policy was consistent with the
25 Supreme Court’s decision in Marsh v. Chambers, 463 U.S. 782 (1983) and the
26 Eleventh Circuit Court of Appeals’ decision in Pelphrey v. Cobb County, 547 F.3d
27 1263 (11th Cir. 2008). It did not mention the California Court of Appeal’s
28 decision in Rubin v. City of Burbank, 101 Cal. App. 4th 1194 (2002).

1
2 19. Lancaster's mayor and vice mayor submitted a ballot argument in favor
3 of Measure I, which stated: "It is every INDIVIDUAL'S RIGHT to pray in
4 accordance with their [sic] own convictions and beliefs; and to pray to the deity of
5 their [sic] own choosing including in the name of JESUS CHRIST."

6
7 20. No one submitted a ballot argument in opposition to Measure I.
8

9 21. At the April 13, 2010 general municipal election, Measure I passed with
10 9,765 votes in favor and 3,116 votes in opposition.
11

12 22. The passage of Measure I had no impact on the Procedures followed by
13 the City Clerk.
14

15 23. The City Clerk has deviated from the Invocation Policy/Procedures
16 twice. The first deviation occurred with regard to the April 27, 2010 City Council
17 meeting, which was the first meeting after the passage of Measure I. Pastor
18 Chappel, the originally scheduled invocation speaker, cancelled his appearance and
19 requested that the City Clerk invite Bishop Henry Hearn, who was also a member
20 of his congregation. The City Clerk granted the request, and Hearn agreed to give
21 the April 27 invocation.
22

23 24. Hearn is also Lancaster's former mayor. At the time of the April 27
24 invocation and at the time of trial, he was the honorary mayor.
25

26 25. The second deviation occurred with regard to the May 11, 2010 City
27 Council meeting, which was approximately one week after the filing of the instant
28 lawsuit. Approximately three to four weeks before the meeting, the originally

1 scheduled speaker (a Christian) had cancelled. The City Manager suggested that
2 the City Clerk invite non-Christians to give the invocation for any vacancies.
3 About two or three weeks before the meeting, the City Clerk sent emails to
4 someone of the Jewish faith and the Muslim faith, but got no response. The City
5 Clerk then sought help from one of the planning commissioners whom she knew to
6 be of the Sikh faith. She then invited Nirinjan Singh of the California Sikh
7 Council, and Singh accepted.

8
9 26. Since the City Council adopted the Invocation Policy: (1) twenty
10 invocations were given by people from Christian denominations, and each included
11 a reference to Jesus or Jesus Christ; (2) four invocations were by a person who
12 identifies as a metaphysicist; (3) one invocation was given by a member of the
13 California Sikh Council; and (4) one invocation was given by a person from an
14 Islamic congregation. On four occasions no invocation was given because the
15 scheduled speaker cancelled or was absent. No meetings were held on November
16 23, 2010 or December 28, 2010. When counted only from the date of the
17 challenged invocation, April 27, 2010, nine additional invocations included
18 references to Jesus or Jesus Christ and five invocations have not included such
19 references. (Joint Stipulation of the Parties, Docket # 36.)

20
21 27. Mayor Parris personally paid for and attended a private meeting of the
22 Ministerial Association in 2010. At that meeting, Mayor Parris said: “We are
23 growing a Christian community, and we should not shy away from that.” He may
24 have made a similar statement during the State of the City address, as was reported
25 in a local newspaper. He has made speeches to organizations such as the Chamber
26 of Commerce and Rotary Club that did not contain such statements.

27
28 28. It is Mayor Parris’s personal belief, elected position, and intent, to grow

1 a Christian community in Lancaster. He testified that he meant a “community
2 where we love our neighbors, that we take care of our neighbors, that we protect
3 our neighbors.” He further testified that this is his policy; it is not an official City
4 policy.

5
6 29. Other than encouraging “a lot of religious leaders including Sikhs,
7 Rabbis, and Muslims to sign up for it,” Mayor Parris had nothing to do with the
8 creation of the list. There is no evidence that he has participated or influenced or
9 attempted to influence the scheduling of any individual to deliver an invocation at
10 any particular meeting. Other than calling the person who is scheduled to give the
11 invocation, he is not involved in the process. He has never inquired into, reviewed,
12 or been involved in the content of any invocation given at a City Council meeting.

13
14 30. Plaintiffs attended the City Council meeting on April 27, 2010 at which
15 Hearn stated the following:

16 Our Father we come to you tonight with a great honor that you have
17 given us to be in America, in the land of the free and brave. You’ve
18 brought us from all cultures, walks and levels of education even into
19 this room tonight and we thank you for it. I particularly thank you for
20 the men and women that have selected to stand forward in the midst of
21 all that can come at them and say yes, I will be one of those who will
22 help govern my city to be the best city it could ever be in this country
23 or anywhere else. Now, Master, we can’t do it without your wisdom.
24 But with your wisdom it is definitely possible. We thank you for what
25 we see going on in the streets, the buildings and all of the other things
26 that are happening because of the forethought of the Council that are
27 sitting and is to come. So now Lord I pray starting with our Mayor,
28

1 ask that you give him wisdom and to speak to him in a way maybe
2 like only you can speak and only he can hear. I pray for our Vice-
3 Mayor, I pray for each Council Member, I pray for those who will be
4 seated, and I just ask you now Lord on behalf of the City, on behalf of
5 every person in this City, I pray for fairness and equitable for every
6 person that walk into this hall. I pray for every staff member, I pray
7 for our City Manager, Mark, and all of those men and women who
8 work under him. God, we can't move without you. Help us tonight as
9 we dive into 2010 and on. Would you bless us Lord? Bring our minds
10 to know you and in the precious, holy and righteous and matchless
11 name of Jesus I pray this prayer. Amen and Amen. God bless you.
12

13 31. Plaintiffs were upset and offended because Hearn mentioned the name
14 Jesus. Neither plans on attending additional City Council meetings until the
15 Invocation Policy forbids people from referring to "Jesus" or "Jesus Christ."
16

17 32. Though their pleadings are somewhat ambiguous as to the scope of their
18 claim, Plaintiffs clarified at the trial that they challenge only the invocation given
19 April 27, 2010, and challenge only the reference to Jesus, (Tr. 4, 83-84; but see Tr.
20 85), though both earlier and later invocations have on occasion also referred to
21 Jesus or Jesus Christ. Plaintiffs do not ask that the Court change the City's
22 Invocation Policy; instead they ask that, considering the context in which the
23 invocation was given, the Court find that the April 27, 2010 invocation violated the
24 Establishment Clause. (Tr. 85.) They also seek an injunction prohibiting the City
25 "from allowing any session of its City Council to include an invocation wherein
26 the name of Jesus Christ is spoken." (Pls.' Tr. Brief 1; see, e.g., Tr. 5-6, 80, 88.)
27
28

CONCLUSIONS OF LAW

A. Plaintiffs Fail to Establish a Violation of 42 U.S.C. § 1983

1. To state a claim under 42 U.S.C. § 1983, a plaintiff must prove “(1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of State law.” Long v. Cnty. of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

2. Plaintiffs do not challenge the Invocation Policy itself. (Tr. 7.) They argue instead that references to Jesus in such invocations - specifically the reference made by Hearn during the April 27, 2010 invocation - violate the First Amendment’s Establishment Clause. (Tr. 4, 83-84.) Pursuant to the Establishment Clause, the government “shall make no law respecting an establishment of religion” U.S. Const. Amend. I. The Establishment Clause applies to the states under the Fourteenth Amendment. See Murdock v. Pennsylvania, 319 U.S. 105, 108 (1943).

3. Plaintiffs presumably contend the City of Lancaster should have prohibited Hearn from referring to Jesus, as the City is the only defendant.

4. The parties agree that the Invocation Policy, and Hearn’s invocation in particular, should be analyzed by the law governing “legislative prayer.”

5. The United States Supreme Court first addressed the constitutionality of legislative prayer in Marsh v. Chambers, 463 U.S. 783 (1983), where the Court considered whether Nebraska’s practice of opening its legislative sessions with an

1 invocation violated the Establishment Clause. Id. at 785-86. Both parties agree
2 Marsh controls the Court’s analysis (though Plaintiffs contend that case was
3 wrongly decided).²

4
5 6. In deciding that legislative prayer is not a per se violation of the
6 Establishment Clause, the Supreme Court noted that “[t]he opening of sessions of
7 legislative and other deliberative public bodies with prayer is deeply embedded in
8 the history and tradition of this country.” Id. at 786. The Court also concluded
9 that the first Congress’s use of the practice showed that “the First Amendment . . .
10 draftsmen saw no real threat to the Establishment Clause arising from a practice of
11 prayer similar to that . . . challenged.” Id. at 791.

12
13 7. The Supreme Court found that Nebraska’s practice of opening its
14 legislative sessions with an invocation did not violate the Establishment Clause
15 even though (1) a clergyman of only one denomination had given the opening
16 prayer for 16 years; (2) the state paid the chaplain to provide the opening prayer;
17 and (3) the prayers were in the “Judeo-Christian tradition.” Id. at 793. The Court
18 rejected the first concern because the evidence showed the minister had been
19 reappointed due to his performance and personal qualities, and not because of his
20 religious beliefs. Id. It rejected the second concern because historically the person
21 who gave the opening prayer at a legislative session had been paid with
22 government funds. Id. at 794. With respect to the third concern, the Supreme
23 Court held:

24
25 ² The Ninth Circuit has noted that “Marsh is a narrow opinion that should be construed as
26 carving out an exception to normal Establishment Clause jurisprudence due to the ‘unique
27 history’ of legislative prayer.” Card v. City of Everett, 520 F.3d 1009, 1014 (9th Cir.
28 2008).

1 The content of the prayer is not of concern to judges where, as here,
2 there is no indication that the prayer opportunity has been exploited to
3 proselytize or advance any one, or to disparage any other, faith or
4 belief. That being so, it is not for [the court] to embark on a sensitive
5 evaluation or to parse the content of a particular prayer.

6 Id. at 794-95. In a footnote, the Supreme Court noted that the minister
7 characterized his prayers as “nonsectarian,” “Judeo Christian,” and as having
8 “elements of the American civil religion,” and that although some of his earlier
9 prayers were “explicitly Christian,” the minister removed all references to Jesus
10 Christ after a legislator complained. Id. at 793 n.14.

11
12 8. Plaintiffs have made clear that their contention that the April 27
13 invocation violates the Establishment Clause rests solely on the single reference to
14 Jesus. (Tr. 4, 83-84.) Plaintiffs have presented no evidence or argument to suggest
15 that the April 27 “prayer opportunity [was] exploited to proselytize or advance any
16 one, or to disparage any other, faith or belief,” and have not contended that it had
17 this purpose or effect. (See Complaint; Pls.’ Tr. Brief; Pls.’ Proposed Findings of
18 Fact and Conclusions of Law.)

19
20 9. Whether Marsh’s footnote 14 established a “bright-line” rule prohibiting
21 “sectarian” legislative prayer, or merely noted an historical fact about the case, has
22 been the subject of substantial debate. For example, six years after deciding
23 Marsh, the Supreme Court considered a challenge to the constitutionality of a
24 crèche in a county courthouse and a Chanukah menorah outside a city and county
25 building in County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S.
26 573 (1989). The Court found the display of the menorah acceptable, but not the
27 display of the crèche. Justice Blackmun, for the majority, responded “in some
28

1 depth” to Justice Kennedy (joined by three other justices), who argued in dissent
2 that Marsh compelled the conclusion that both displays were consistent with the
3 Establishment Clause. In that portion of his opinion, Justice Blackmun reiterated
4 that although legislative prayers are not per se unconstitutional, they cannot “have
5 the effect of affiliating the government with any one specific faith or belief.” Id. at
6 603. He also opined that “[t]he legislative prayers involved in Marsh did not
7 violate this principle because the particular chaplain had ‘removed all references to
8 Christ.’” Id. at 603 (quoting Marsh, 463 U.S. at 793 n.14).

9
10 10. Subsequent cases evaluating Establishment Clause challenges - in this
11 and other contexts - have not reached consensus. As evidenced by the briefing in
12 this case, those who advocate only “nonsectarian” prayer (if prayer is to be
13 permitted at all) interpret Allegheny’s reference to Marsh as a blanket prohibition
14 against “sectarian” prayer. See, e.g., Wynne v. Town of Great Falls, South
15 Carolina, 376 F.3d 292 (4th. Cir. 2004)³; Rubin v. City of Burbank, 101 Cal. App.
16 4th 1194 (2002). Two other opinions supporting this view, Doe v. Tanipahoa
17 Parish School Board, 473 F.3d 188 (5th Cir. 2006) and Hinrichs v. Bosma, 440
18 F.3d 393 (7th Cir. 2006), were vacated or reversed and remanded with instructions
19 to dismiss for lack of standing.

20
21 11. Those who reject this supposed “bright-line”⁴ rule, and advocate for a

22
23 ³ Arguably, even Wynne does not take this position. See Simpson v. Chesterfield Cnty.
24 Bd. of Supervisors, 404 F.3d 276, 283-84 (4th Cir. 2005) (noting Wynne was concerned
25 with “repeated invocations of a single faith”).

26
27 ⁴ As many of these cases - including Marsh - illustrate, even the line between sectarian
28 and non-sectarian is not always clear. See, e.g., Pelphrey v. Cobb Cnty., Ga., 547 F.3d
1263, 1272 (11th Cir. 2008). As the Eleventh Circuit noted, whether certain references

1 policy that allows “sectarian” prayer so long as it is not “exploited to proselytize or
2 advance any one, or to disparage any other, faith or belief,” rely heavily on
3 Marsh’s mandate not to “embark on a sensitive evaluation or to parse the content
4 of a particular prayer.” See, e.g., Pelphrey v. Cobb Cnty., Ga., 547 F.3d 1263,
5 1271-72 (11th Cir. 2008); Snyder v. Murray City Corp., 159 F.3d 1227 (10th Cir.
6 1998) (en banc); Galloway v. Town of Greece, 732 F. Supp. 2d 195 (W.D.N.Y.
7 2010); Doe v. Indian River Sch. Dist., 685 F. Supp. 2d 524 (D. Del. 2010); Doe v.
8 Tangipahoa Parish Sch. Bd., 631 F. Supp. 2d 823 (E.D. La. 2009); see also Lee v.
9 Weisman, 505 U.S. 577 (1992) (holding a school could not provide for
10 “nonsectarian” prayer to be given by clergyman selected by the school); Turner v.
11 City Council of Fredricksburg, 534 F.3d 352 (4th Cir. 2008) (upholding policy
12 permitting only nondenominational prayers, expressly declining to hold that Marsh
13 requires such a policy, and applying Marsh’s prohibition against parsing the
14 content of a particular prayer); Simpson v. Chesterfield Cnty. Bd. of Supervisors,
15 404 F.3d 276, 283-84 (4th Cir. 2005) (noting defendant “has aspired to
16 nonsectarianism and requested that invocations refrain from using Christ’s name,”
17 but describing terms used by clerics, including “the God of Abraham, of Moses,
18 Jesus, and Mohammad,” “King of Kings,” and others). These cases have
19 thoroughly analyzed the topic and the Court can add little or nothing to the debate.
20 Having reviewed these cases and others, the Court concludes that Marsh does not
21 prohibit sectarian prayer and specifically does not prohibit references to Jesus or
22 any other deity. Instead, Allegheny’s reference is best viewed as describing one
23 possible means of assuring that the legislative prayer does not have the prohibited
24 purpose or effect. See Turner, 534 F.3d at 356.

25
26 12. Plaintiffs rely heavily on Rubin v. City of Burbank, 101 Cal. App. 4th

27
28 “are ‘sectarian’ is best left to theologians, not courts of law.” Id. at 1267.

1 1194 (2002),⁵ a case in the “bright-line” rule category. Id. at 1203-04. As
2 previously noted, although the “bright-line” rule may (arguably) be easier to
3 enforce, this Court does not find the analysis persuasive. The Court in Rubin does
4 not point to any factor other than the actual content of the prayer to support a
5 finding that the City of Burbank used its legislative prayer for an improper
6 purpose. But - as previously stated - Marsh prohibits that approach: “[I]t is not for
7 [the court] to embark on a sensitive evaluation or to parse the content of a
8 particular prayer.” Marsh, 463 U.S. at 795.⁶

9
10 13. Joyner v. Forsyth County, North Carolina, 2009 WL 3787754 (M.D.
11 N.C. 11/9/09), the only district court case cited by Plaintiffs, does not support their
12 position. All that can be gleaned from the brief order there is that the district court
13 found that the specific prayers at issue “did not reflect diversity and inclusiveness,
14 and instead were divisive and had the effect of affiliating the Government with one
15 particular belief.” But the court described neither the prayers themselves nor the
16 policy or practice through which they were presented.

17
18 14. Plaintiffs also cite to Bacus v. Palo Verde Unified School District, 11 F.

19
20 ⁵ The parties have not pointed to any binding Ninth Circuit authority directly on point,
21 and the Court has found none. The court in Rubin based its decision on the United States
22 Constitution rather than California’s equivalent constitutional provision, and therefore its
23 holding is not binding, even as to Plaintiffs’ state law claim.

24 ⁶ Plaintiffs assert in their complaint: “The decision . . . in Rubin v. City of Burbank is the
25 law in California and must be followed and respected by all cities and by all Superior
26 Courts.” (Compl. ¶ 16.) But 42 U.S.C. § 1983, pursuant to which the federal claim is
27 brought, does not provide relief for “violations” of a state court’s interpretation of the
28 United States Constitution. And Rubin did not purport to interpret the California
Constitution. Neither party briefed whether Rubin would have any impact on the conduct
of the City of Lancaster if this Court were to rule against Plaintiffs. That is a matter of
state law better left to a California court.

1 Supp. 2d 1192 (C.D. Cal. 1998), a decision they describe as arguably supporting
2 the City's position. By citing to the Ninth Circuit's unpublished decision reversing
3 the district court, 52 Fed. Appx. 355 (9th Cir. 2002), Plaintiffs suggest the Ninth
4 Circuit has adopted their interpretation of Marsh. Not so. The Ninth Circuit
5 specifically stated that it "need not decide whether prayers 'in the Name of Jesus'
6 would be a permissible solemnization of a legislature-like body, provided that
7 invocations were, as is traditional in Congress, rotated among leaders of different
8 faiths, sects, and denominations." Id.⁷

9
10 15. Plaintiffs argue that "there has been a history of this sort of conduct,"
11 and that the Policy is only "a nod and a wink" that "looks good on paper" but has
12 not been followed. (Tr. 4-6, 85-86.) Plaintiffs therefore ask that the Court view
13 the April 27, 2010 invocation "in context." (Tr. 4-6, 76, 85-86.) But such an
14 analysis does not support Plaintiffs' cause. There is no evidentiary support for
15 Plaintiffs' apparent contention that the Invocation Policy or Procedures, which on
16 their face encourage participation by members of all faiths and discourage
17 proselytizing and disparagement - are a sham. Plaintiffs do not challenge the
18 testimony of Geri Bryan, the City Clerk who prepares the list. The Joint
19 Stipulation establishes that members of various faiths have accepted the City's
20 invitation and given invocations. Plaintiffs' contention that the timing of the
21 attendance of Nirinjan Singh, director of the California Sikh Council, was
22 suspicious, was disproved by evidence that established his presence had been
23 arranged before the instant lawsuit was filed. Although the statement in support of
24 Measure I specifically endorses allowing references to Jesus Christ, it also

25
26
27 ⁷ The district court in Indian River cited several occasions on which prayers given in the
28 United States House of Representatives referred to Jesus. Indian River, 685 F. Supp. 2d
at 542 n.137.

1 endorses reference to any deity chosen by the person giving an invocation.
2 Because Measure I was meant to address the letter from the American Civil
3 Liberties Union that specifically condemned references to Jesus Christ, the Court
4 finds nothing nefarious in the Measure's reference to Jesus Christ. The Court also
5 finds that the City Attorney's analysis of Measure I provided a correct statement of
6 federal constitutional law. In addition, whatever one may conclude about the
7 statements of Lancaster's mayor, neither the mayor's personal beliefs nor his
8 comments concerning a "Christian community" - though offensive to some -
9 establish an intent on the part of the City to avoid the mandate of Marsh, especially
10 considering that uncontroverted evidence established that the mayor has no input
11 into the selection process. In fact, Plaintiffs' evidence is less compelling than the
12 evidence rejected by the Supreme Court in Marsh.

13
14 16. Plaintiffs state they are not asking the Court to "change" the Invocation
15 Policy, but rather are asking that the Court "declare" that the April 27, 2010
16 invocation violated the Establishment Clause, and "comment" on the others. (Tr.
17 85.) Assuming, without deciding, that Plaintiffs have properly requested a ruling
18 on the constitutionality of the Invocation Policy, the Court concludes that Plaintiffs
19 have failed to establish that the Policy has been used for an improper purpose or is
20 otherwise unconstitutional. Volunteers of numerous faiths are invited to and have
21 given invocations before City Council meetings, and the selection process does not
22 discriminate against any faith. In addition, the City imposes no content
23 requirement save for asking that volunteers not use the opportunity "as an effort to
24 convert others to the particular faith" or "to disparage any faith or belief"
25 Thus, the City's policy and practice asks participants to respect the parameters set
26 forth in Marsh. There is no suggestion, much less any evidence, that on the single
27 occasion when the City Clerk sought someone from a specific faith, she did so to
28

1 proselytize, advance, or disparage any particular faith.

2
3 17. Determining that the April 27, 2010 invocation violated the
4 Establishment Clause by its single reference to Jesus would require this Court to
5 analyze the content of the prayer. But because Plaintiffs do not even claim the
6 April 27 invocation was “exploited to proselytize or advance any one, or to
7 disparage any other, faith or belief,” this Court cannot properly perform such an
8 analysis. Marsh, 463 U.S. at 794-95. Because their evidence fails to show the
9 April 27 invocation (or the Invocation Policy itself) would have the “effect of
10 affiliating the government with any other one specific faith or belief,” Plaintiffs
11 have not shown an Establishment Clause violation. Allegheny, 492 U.S. at 603.

12
13 **B. Plaintiffs Fail to Establish a Violation of Article I, Section 4**
14 **of California’s Constitution**

15
16 18. Because Article I, Section 4 of California’s Constitution is coextensive
17 with the First Amendment’s Establishment Clause, see East Bay Asian Local Dev.
18 Corp. v. State, 24 Cal. 4th 693, 718 (2000), Plaintiffs’ claim that Defendant
19 violated this section must fail as well.

20
21 **CONCLUSION**

22
23 For these reasons, the Court concludes that Plaintiffs have not proven an
24 Establishment Clause violation or a violation of Article I, Section 4 of the
25 California Constitution.



26
27 7/13/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

Dale S. Fischer
United States District Judge